RE RAJU JAYARAMAN KERPAYA EX P ASSOCIATED ASIAN SECURITIES (PTE) LTD

HIGH COURT MALAYA, PULAU PINANG
ABDUL HAMID MOHAMAD J
[BANKRUPTCY NO: 29-227-1996]
23 SEPTEMBER 1998

CIVIL PROCEDURE: *Judgment - Reciprocal enforcement of judgments - Foreign judgment obtained by judgment creditor for money claimed - Whether order of Malaysian court giving leave to register judgment complied with procedural rules - Whether issue of bankruptcy notice pursuant thereto by judgment creditor was bad in law - Reciprocal Enforcement of Judgments Act 1958, ss. 4-7 - Rules of the High Court 1980, O. 67 rr. 5-10, 13*

BANKRUPTCY: *Notice - Bankruptcy notice - Application to set aside - Whether issue of bankruptcy notice was bad in law*

The judgment creditor ('JC') appealed against the decision of the Senior Assistant Registrar who set aside the bankruptcy notice issued by the JC to the judgment debtor ('JD').

The JC had obtained a judgment ('the judgment') for a certain amount of money in the High Court of the Republic of Singapore. Subsequently, in a proceeding in the High Court Malaya at Kuala Lumpur, the Malaysian Court made an order giving leave to register the judgment. With that order, the JC issued a bankruptcy notice against the JD. The JD, thereafter, applied to set it aside. The SAR allowed the application and hence, the instant appeal.

Held:

[1] An application to register a judgment obtained in a foreign court to the Malaysian High Court may be made *ex parte* or *inter parte*. The court must make an order in Form 145 as required under O. 67 r. 5(1) of the RHC, giving leave to register the judgment. The order must be drawn up and served on the judgment debtor. The order must state the period within which the judgment debtor may apply to set aside the registration. It must also contain a notification that execution will not issue until after the expiration of that period. Further, a notice of such registration must be served on the judgment debtor followed by an endorsement by the person who serves it. If it is not endorsed, the judgment creditor may not issue execution on the judgment without leave of the court. An affidavit of service should be filed and it must state the date on which the notice was endorsed. Then, the judgment debtor may apply to set aside the registration.

[1a] In this instance, the issue of the bankruptcy notice was premature and void. The order was nothing more than an order "giving leave to register a judgment". It was not drawn up in Form 145. The most serious omission was the failure to state the requirement of r. 5(2) of the Rules of the High Court 1980. A notice of registration as provided by r. 7 was also not served on the JD and duly endorsed. An affidavit of service was also not filed. There was a clear and serious non-compliance with the rules which was sufficient to render the issue of the bankruptcy notice bad in law.

[2] Although the application for registration was heard *inter parte* and was seriously contested and extensively argued, the order remained an order giving leave to register. Requirements subsequent to the order was not complied with.

[Appeal dismissed.]

Case referred to:
The Development Bank of Singapore Ltd v. Furniture Industries Pte Ltd & Ors [1992] 2 CLJ 809 ***(refd)***

Legislation referred to:
Reciprocal Enforcement of Judgments Act 1958, ss. 4(1), (2), 5, 6, 7
Rules of the High Court 1980, O. 67, rr. 2, 5(1), (2), 6, 7, 8, 9, 10, 13

For the petitioner - Pathmanathan; M/s Yusuf Khan & Pathmanathan
For the respondent - Gunaseelan; M/s Jayaraman, Ong & Co

Reported by Usha Thiagarajah

JUDGMENT

Abdul Hamid Mohamad J:

This is an appeal against the decision of the Senior Assistant Registrar setting aside the bankruptcy notice dated 29 March 1996. The appellant is the judgment creditor in this bankruptcy proceeding.

The judgment creditor had obtained a judgment for S$5,357,187 (RM8,389,354.84) and costs in the High Court of the Republic of Singapore on 8 May 1991 in Civil Suit No. 2275 of 1989.

Subsequently, in a proceeding in the High Court Malaya at Kuala Lumpur, the Malaysian Court, made the following order:

... ADALAH DIPERINTAHKAN

(1) Penghakiman Mahkamah Tinggi Republik Singapura Guaman No: 2275 tahun 1989 yang bertarikh 8 haribulan Mei, 1991, di mana Defendan Kedua telah dihukum untuk membuat bayaran sebanyak S$5,357,187.00 (iaitu sebanyak RM8,389,354.84 pada kadar pertukaran 1.566 pada 8 haribulan Mei, 1991) bersama dengan faedah pada kadar 8% setahun mulai dari tarikh pengeluaran Writ Saman sehingga tarikh penyelesaian dan kos sebanyak S$450.00 (iaitu sebanyak RM704.70 pada kadar pertukaran 1.566 pada 8 haribulan Mei, 1991) dapat didaftarkan sebagai satu Penghakiman di Mahkamah Tinggi Malaya selaras dengan Akta Penguatkuasaan Penghakiman Bersaling, 1958; dan

With that order, the judgment creditor issued a bankruptcy notice against the judgment debtor.

There appears to be some problems in serving the bankruptcy notice on the judgment creditor and the life of the bankruptcy notice had to be extended and was extended.

Finally, after it was served, the judgment debtor, on 17 April 1997, filed a summons-in-chambers to set aside the bankruptcy notice. The Senior Assistant Registrar allowed the application. The judgment creditor appealed to judge-in-chambers. I dismissed the appeal.

Even though the judgment debtor raised a number of grounds in his affidavits challenging the bankruptcy notice, before me only one issue was canvassed, ie, whether the Singapore judgment has been registered in Malaysia, as provided by the rules.

Section 4(1) of the Reciprocal Enforcement of Judgments Act 1958 (Act 99) provides that an application may be made to the High Court of this country to have a foreign judgment registered. Section 4(2), *inter alia*, provides:

(2) Subject to the provisions of this Act with respect to the setting aside of registration –

(a) a registered judgment shall, for the purpose of execution, be of the same force and effect,

(b) proceedings may be taken on a registered judgment,

(c) ...

(d) ...

as if the judgment had been a judgment originally given in the registering court and entered on the date of registration ...

Section 5 provides for the setting aside of a registered judgment.

Section 6 empowers the Malaysian court to set aside a registered judgment.

Section 7 provides:

> 7. No proceedings for the recovery of a sum payable under a judgment of a superior court, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in Malaysia.

We now come to the Rules of the High Court 1980 (RHC 1980). The relevant order is O. 67.

Rule 2 provides that an application to have the foreign judgment registered must be made by an originating summons. No appearance need be entered to the originating summons. (In Singapore the practise is that the application is heard *ex parte* – see *The Development Bank of Singapore Ltd v. Furniture Industries Pte Ltd & Ors* [1992] 2 CLJ 809.

After hearing the application the judge-in-chambers or the registrar may give leave to register the judgment. Rules 5 provides:

> 5.(1) An order in Form 145 giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor and served on the judgment debtor.
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> (2) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.
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> (3) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

Rule 6 provides:

> 6.(1) There shall be kept in the Registry a register of the judgments ordered to be registered under the Act.
>
> (2) There shall be included in such register particulars of any execution issued on a judgment ordered to be so registered.

Rule 7 provides:

7.(1) Notice of the registration of a judgment must be served on the judgment debtor and, subject to paragraph (2), must be served personally unless the Court otherwise orders.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such a notice as they apply in relation to notice of a writ.

(3) The notice of registration must state –

(a) full particulars of the judgment registered and the order for registration;

(b) the name and address of the judgment creditor or of his solicitor on whom, and at which, any summons issued by the judgment debtor may be served;

(c) the right of the judgment debtor to apply to have the registration set aside; and

(d) the period within which an application to set aside the registration may be made.

Rule 8 provides:

8.(1) Within 3 days after service of the notice of registration or within such longer period as the Court may, in special circumstances, allow, the notice or a copy thereof must be indorsed by the person who served it with the day of the week and date on which it was served; and, if the notice is not so indorsed within the period aforesaid the judgment creditor may not issue execution on the judgment to which the notice relates without the leave of the Court.

(2) Every affidavit of service of any such notice must state the date on which the notice was indorsed under this rule.

Rule 9 provides:

9.(1) An application to set aside the registration of a judgment must be made by summons supported by affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the Act is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be

registered under section 3(2) of that Ordinance or that it is not just or convenient that the judgment should be enforced in Malaysia or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

Rule 10 provides:

> 10.(1) Execution shall not issue on a judgment registered under the Act until after the expiration of the period which, in accordance with rule 5(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the Court, until after the expiration of that period as so extended.
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> (2) If an application is made to set aside the registration of a judgment execution on the judgment shall not issue until after such application is finally determined.
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> (3) Any party wishing to issue execution on a judgment registered under Act must produce to the sheriff an affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

Rule 13 provides how an application under r. 10 may be made.

Let me now try to summarise the procedure as provided by O. 67.

Having obtained a judgment in a foreign court, the judgment creditor applies by way of an originating summons to the Malaysian High Court to have the judgment registered. The application may be made *ex parte* or *inter parte*. The court makes an order in Form 145 giving leave to register the judgment. The order must be drawn up and served on the judgment debtor. The order must state the period within which the judgment debtor may apply to set aside the registration. It must also contain a notification that execution will not issue until after the expiration of that period.

A notice of such registration must be served on the judgment debtor. The notice must state full particulars of the judgment registered and the order for registration, the name and address of the judgment creditor or his solicitor on whom and at which any summons issued by the judgment debtor (to set aside the registration) may be served, the right of the judgment debtor to apply to have the registration set aside, and the period within which an application to set aside the registration may be made. The notice must be served on the judgment debtor followed by an endorsement by the person who serves it. If it is not endorsed, the judgment creditor may not issue execution on the judgment without leave of the court. An affidavit of service will have to be

filed and it must state the date on which the notice was endorsed. Then, the judgment debtor may apply to set aside the registration.

Rule 10 reiterates that execution shall not issue until after the expiration of the period within which the judgment debtor may make an application to set aside the registration. If an application is made, execution shall not issue until after such an application is determined.

What happened in this case?

The judgment creditor made an application for registration under r. 2. The originating summons was served on the judgment debtor. The application was heard *inter parte*. An order was given. That order is in the form of a usual order made by court, but not in Form 145. The most serious omission is the failure to state:

> It is further ordered that the above named (name of judgment debtor) be at liberty to apply to set aside the said registration within .... days after service upon him (within the jurisdiction) (or name of foreign country if to be served abroad) of notice of such registration pursuant to rule 7 of Order 67 if he has grounds for so doing, and execution upon the said judgment will not issue until after the expiration of that period or any extension of the period granted by the Court; or if an application be made to set aside the registration until such application has been disposed of.

That is also the requirement of r. 5(2).

Notice required by r. 7 was not served on the judgment debtor. With the order dated 24 July 1995, the judgment creditor proceeded to issue the bankruptcy notice.

I am of the view that the issue of the bankruptcy notice is premature and void. That order is nothing more than an order "giving leave to register a judgment", to quote the words used in r. 5(1). Indeed it must be drawn up as in Form 145, served on the judgment debtor, which was not done. A notice of registration as provided by r. 7 must also be served on the judgment debtor and duly endorsed. An affidavit of service must be filed. These were not done.

There has been clear and serious non-compliance with the rules. That is sufficient to render the issue of the bankruptcy notice bad in law.

It is true that the application for registration was heard *inter parte*. It is true that that application was seriously contested and extensively argued, which learned counsel for the judgment debtor now admits was partly his fault. But, the order remains an order giving leave to register. Requirements subsequent to the order have not been complied with.

a In the circumstances the issue of the bankruptcy notice is premature and is bad in law. On this ground I dismissed the appeal and confirmed the order of the Senior Assistant Registrar with costs.

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